Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	WT Docket No. 96-6
Rules to Permit Flexible	)	
Service Offerings in the	)	
Commercial Mobile Radio Services	)	

COMMENTS OF AT&T CORP.

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AT&T Corp. ("AT&T"), by its attorneys, hereby submits its comments on the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1/]

INTRODUCTION AND SUMMARY

In the First Report and Order, the Commission adopted an important first step to increasing competition in both the local exchange and commercial mobile radio services ("CMRS") markets. Permitting CMRS providers to use their licensed spectrum for all fixed services, separately and in combination with mobile services, will give carriers the flexibility to better respond to consumer demand. Ultimately, this should increase the opportunity for consumers to have viable alternatives to the landline incumbent local exchange carriers ("LECs"), resulting in lower prices and more innovative service offerings.

That day has not arrived, however. No cellular, broadband personal communications service ("PCS"), or specialized mobile radio ("SMR") licensee has yet rolled out a fixed

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[1/] In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-283 (rel. Aug. 1, 1996) ("Further Notice").

application, and wireless services do not currently constitute replacements for wireline telephone service. While wireless technology is moving toward this goal, undue and multiple layers of regulation will stymie this technology before it has the opportunity to reach its full potential. If CMRS providers are prematurely subjected to state entry regulation, as well as state and federal rate regulation, they will likely be deterred from undertaking the substantial costs of offering fixed services on any meaningful scale. For this reason, AT&T believes that the Commission should continue to regulate wireless services as CMRS until and unless these services become a substitute for wireline local loop service.

The Commission is legally justified in retaining the CMRS classification until that time. In the Communications Act, Congress specifically provided that any service established in the Commission's PCS docket or any successor proceeding would be defined as a "mobile service." When Congress amended the mobile services definition in this manner, it was well aware that the Commission anticipated that broadband PCS might be used for fixed services, including wireless replacements for landline telephone service. Congress nevertheless made the clear choice to retain the CMRS classification for any broadband PCS service, regardless of its actual functionality.

Although the only explicit reference in the Act's mobile service definition is to PCS, the congressional mandate of regulatory parity requires all CMRS to receive comparable treatment. The Commission has recognized that all broadband wireless services have the potential to compete with each other and this is equally the case for their introduction of fixed services. Indeed, many cellular providers have upgraded and digitized their systems and will provide services identical to those offered by broadband PCS carriers. Accordingly,

the Commission should decline to change the regulatory status of any wireless service until it substantially replaces wireline local loop service.

I. FIXED SERVICES SHOULD BE TREATED AS CMRS UNTIL THE SERVICE CONSTITUTES A SUBSTITUTE FOR LANDLINE TELEPHONE SERVICE IN A SUBSTANTIAL PART OF A STATE

By confirming that wireless providers have the flexibility to provide fixed or mobile services over their spectrum, the Commission enhanced the options available to consumers and potentially allowed competition from wireless carriers in the local exchange marketplace. This action was an important step in fulfilling the Commission's longstanding goal of removing barriers that prevent CMRS providers from "compet[ing] directly against LEC wireline services."[2/]

The fact is, however, that at this point wireless local loop service is only a potential alternative to traditional landline services. No cellular or broadband PCS provider has yet introduced such a service and no LEC customers have switched from their primary carriers to wireless local loop providers. Accordingly, it not possible to predict exactly how wireless networks will develop. As the Commission recognizes, carriers may incorporate dual-use technology that is capable of being used in either a mobile or fixed mode or they may choose to designate blocks of spectrum primarily or solely for fixed services.

The Commission should be careful to ensure that its regulation does not inhibit the most efficient evolution of wireless fixed services. Regulatory classification should not

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[2/] Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Notice of Proposed Rulemaking, FCC 95-505 at ¶ 2 (rel. Jan. 11, 1996).

depend upon whether a carrier provides a certain mix of services over its radio frequencies or the size of its fixed service area. Rather, the Commission should retain the CMRS classification for all wireless services until such time as the fixed service constitutes a substitute for landline telephone exchange service in a substantial part of a state.[3/] This will "ensure that economic forces -- not disparate regulatory requirements -- shape the development of the CMRS marketplace."[4/]

Congress has found that when one service substantially replaces another, a reevaluation of its regulatory status may be appropriate. The "substantial substitute" test is familiar to providers. It is used in Section 332(c)(3) of the Communications Act to determine when states may regulate CMRS rates[5/] and in Section 251(h)(2)(B) to determine when carriers are to be treated as incumbent LECs.[6/] The use of this approach to determine the regulatory treatment of wireless services would enhance competition by minimizing regulatory confusion for CMRS providers, states, and existing customers.

While the Commission's proposal to establish a rebuttable presumption that any wireless services provided under a CMRS provider's license should be regulated as CMRS

[3/] Further Notice at ¶ 56. At that point, a state could petition the Commission under Section 332(c)(3) for authority to regulate the fixed service offering. 47 U.S.C. § 332(c)(3).

[4/] In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, Notice of Proposed Rulemaking, FCC 96-17 at ¶ 19 (rel. Jan. 25, 1996) ("Notice").

[5/] 47 U.S.C. § 332(c)(3)(A)(ii) (preempting states from CMRS rate regulation unless wireless "services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State").

[6/] 47 U.S.C. § 251(h)(2)(B) (conditioning treatment as an incumbent LEC upon a showing that a carrier has "substantially replaced an incumbent local exchange carrier").

recognizes that the provision of fixed services alone is insufficient to warrant a change in regulatory classification, this approach would open the regulatory status of each new service to challenge.[7/] These individualized determinations would be very time consuming and resource intensive for both the Commission and CMRS carriers, and ultimately could discourage providers from meeting customer demand in the most efficient manner possible.[8/] This would contravene Congress's objectives, as reflected in the 1996 Act, of encouraging prompt and meaningful local exchange competition and the "rapid, efficient" deployment of service.[9/]

If the Commission chooses such an approach, however, the presumption should not be rebuttable if a CMRS licensee provides any mobile service in the same major trading area ("MTA") as the fixed service. Fixed wireless services should be regulated as CMRS if the licensee offers mobile services in the MTA directly or through an entity in which it holds an attributable interest, and regardless of whether the fixed and mobile services are provided pursuant to the same license or the same service.[10/] Determining regulatory classification in this manner is in keeping with the national approach to the regulation of CMRS that both

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[7/] See Further Notice at ¶ 53.

[8/] If the Commission were to create a case-by-case determination system, one way to reduce the administrative burden and narrow the scope of anticompetitive abuse would be to limit the entities that can petition for a change in regulatory status to state public utilities commissions.

[9/] 47 U.S.C. § 151.

[10/] For example, distinctions should not be made between a licensee that uses part of a 30 MHz broadband PCS license to provide fixed services and part to provide mobile services and a licensee that provides mobile services over a 10 MHz broadband PCS license and fixed services over a 25 MHz cellular license in the same market.

Congress and the Commission have endorsed in the past,[11] and appropriately reflects the fact that the federally-determined wireless license areas often span several states. In contrast, the use of formulas, such as attempting to establish the amount of mobile versus fixed traffic or the degree of integration between fixed and mobile services, would require constant monitoring and regulatory adjustment as service mix changes or the geographic scope of the fixed service area expands.[12] This, in turn, would dampen considerably CMRS providers' enthusiasm for entering the local exchange business on a truly competitive basis.

A Commission decision not to treat wireless fixed services as CMRS would have serious adverse ramifications for the Commission and the wireless industry. The Commission would have to make a determination as to which elements of a fixed wireless service are interstate and which are intrastate for purposes of assigning regulatory jurisdiction. Again, because license areas often cross state borders, such a determination would be difficult to administer. Multiple layers of regulation will likewise significantly impede wireless providers' ability to compete with the LEC monopolists.

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[11] See H.R. Rep. 103-111, at 260 (1993) (affirming that Congress intended to preempt all entry regulation of CMRS by state and local governments in order "[t]o foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.")

[12] See Further Notice at ¶ 54 (listing such factors as the relative mobility of stations used in conjunction with fixed service, whether the fixed service is part of a larger package that includes mobile service, the size of the fixed service area, the amount of mobile versus fixed traffic over the wireless system, whether the fixed service is offered over a discrete block of spectrum, the degree of integration between fixed and mobile services, and customers' perceptions of the fixed service).

II. THE COMMUNICATIONS ACT SUPPORTS THE CONTINUED TREATMENT OF ALL WIRELESS SERVICES AS CMRS

The Communications Act provides a compelling legal justification for declining to alter the regulatory status of wireless services, whether they are fixed or mobile in nature. When Congress enacted the Omnibus Budget Reconciliation Act of 1993[13], it created a comprehensive framework for the regulation of mobile services. In the definition of "mobile service" added by OBRA 1993, Congress made clear that PCS services, whether or not carried on mobile stations, are to be defined as CMRS and regulated under Section 332. "Mobile service" is defined to include "any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment of the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding."[14] The plain language of the statute therefore expressly requires that any service established in the PCS docket be considered a mobile service.

AT&T respectfully disagrees with the Commission's suggestion that the specific inclusion of PCS in the statutory definition is meant to be merely an example of a mobile service.[15] This interpretation is directly contrary to the clear meaning of the provision[16]

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[13] Pub. L. No. 103-66, 107 Stat. 312 (1993) ("OBRA 1993").

[14] 47 U.S.C. § 153(27) (emphasis added).

[15] Further Notice at ¶ 49.

[16] See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 843-44 (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."); see also Mills Music v. Snyder, 469 U.S. 153, 164 (1985) (holding that where the wording (continued...)

and would render paragraph (C) of Section 153(27) entirely superfluous. PCS that utilizes mobile stations is subsumed within the general definition of "radio communications carried on between mobile stations or receivers and land stations."[17/] There would have been no need to specifically mention the entire PCS docket proceeding in the definition unless this information was intended to add additional services to those already included within the general definition. Congress is presumed to insert each word and sentence in a statute for a purpose, and significance and effect must be given to each phrase or word.[18/] Likewise, by using the word "any" before both the description of the entire PCS docket and in the phrase "in any successor proceeding," Congress clearly demonstrated that it intended any PCS service, regardless of whether it is primarily fixed or mobile, to be included within the definition of mobile service.

In defining mobile service by explicit reference to GEN Docket No. 90-314, Congress incorporated the Commission's determinations in that docket that a wide variety of services and applications would be included within the broadband PCS "family" of services, including "wireless replacements for ordinary residential and office telephones."[19/] Under the

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[16/](...continued)
of a statute is plain, simple and straightforward, the words should be accorded their normal meanings and the court assumes the ordinary meaning of the words "accurately expresses the legislative purpose.")

[17/] 47 U.S.C. § 153(27).

[18/] See McDonald v. Thompson, 305 U.S. 263, 266 (1938).

[19/] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100, Notice of Proposed Rulemaking and Tentative Decision, FCC 92-333 at ¶ 29 (rel. Aug. 14, 1992). See also In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of
(continued...)

doctrine of legislative ratification, when Congress is both aware of agency action and provides some "meaningful" indication of its intent to ratify this action, Congress is presumed to have considered and approved the agency's action.[20] The specific statutory reference to "GEN Docket No. 90-314; ET Docket No. 92-100"[21] leaves no doubt about Congress's intentions in this case. Congress clearly understood that broadband PCS spectrum might be used for fixed services,[22] and concluded that broadband PCS in any form should nevertheless continue to be defined as CMRS. Presumably this determination was based on Congress's desire to promote the growth of PCS by declining to require radical changes in regulatory classification based upon the type of services a broadband PCS licensee might provide now or in the future. Congress's decision to define mobile service by reference to the then-pending PCS docket as well as any successor proceedings further demonstrates its intention to grant the Commission broad discretion to include all broadband personal communications services within the definition of mobile service as it sees fit.

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[19] (...continued)
New Telecommunications Technologies, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking, FCC 92-437 at ¶ 2 (rel. Oct. 16, 1992) (describing potential new uses for broadband PCS including wireless private branch exchanges and wireless local area networks).

[20] Isaacs v. Bowen, 865 F.2d 468, 475 (2nd Cir. 1989).

[21] 47 U.S.C. § 153(27)(c).

[22] See note 19, supra. See also Statement of Alfred C. Sikes, Chairman, Federal Communications Commission, Before the Subcommittee on Communications of the Senate Committee on Commerce, Science and Transportation on Allocating Radio Spectrum for New Services Based on Emerging Telecommunications Technologies, 1992 FCC LEXIS 2964, *5-*7 (June 3, 1992) (describing potential new broadband PCS offerings including "local communications loops, which would offer subscribers new choices in addition to wirebased telephone or cable television services").

While PCS is the only wireless service specifically mentioned in the statutory mobile services definition, the federal mandate to promote regulatory parity among wireless services requires the Commission to treat other CMRS in a similar fashion.[23/] As the Commission recognizes, cellular and SMR services are now competing with broadband PCS for mobile services customers and there is no reason to believe that the competition will be any less in the market for fixed wireless services. Indeed, many licensees are currently updating their cellular systems and soon it will likely be impossible to differentiate between cellular and broadband PCS.[24/] Accordingly, attaching different regulatory classifications to broadband PCS and other broadband wireless services could provide PCS with a competitive advantage, thereby unnecessarily harming the development of the wireless industry.

[23/] See OBRA 1993, supra note 13, Title VI, § 6002(b)(2)(A), 107 Stat. 312, 392; Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1418 (1994).

[24/] See, e.g.. M. Landler, "From AT&T, A Cellular Service With a Jazzy Name," New York Times at D1 (Oct. 3, 1996); M2 Presswire, "AT&T: Wireless AT&T Digital broadband PCS Service Launched Nationwide, Serves 70 Million," AT&T Press Release (Oct. 3, 1996).

CONCLUSION

For the reasons set forth above, the Commission should regulate any fixed wireless service provided by a CMRS provider as CMRS until such time as the service constitutes a substitute for landline telephone exchange service in a substantial portion of a state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on this 25th day of November, 1996, I caused a copy of the foregoing Comments of AT&T Corp. to be sent by first class mail, postage prepaid, or to be delivered by messenger (*) to the following:

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